

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Kevin T. Levine, an individual and on
behalf of the general public,

Plaintiff,

vs.

BIC USA, INC., a Delaware corporation,
and DOES 1 through 100, inclusive

Defendant.

**CASE NO.: 3:07-CV-01096-LAB-
RBB**

**STIPULATED PROTECTIVE
ORDER**

The Court and the parties recognize that at least some of the documents and information being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this

Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

DEFINITIONS

1. The term “Materials” shall include, but shall not be limited to: documents, correspondence, memoranda, bulletins, blueprints, specifications, customer lists or other material that identify customers or potential customers, price lists or schedules or other matter identifying pricing, minutes, telegrams, letters, statements, cancelled checks, contracts, invoices, drafts, books of account, worksheets, notes of conversations, desk diaries, appointment books, expense accounts, recordings, photographs, motion pictures, compilations from which information can be obtained and translated into reasonably usable form through detection devices, sketches, drawings, notes (including laboratory notebooks and records), reports, instructions, disclosures, other writings, models and prototypes and other physical objects.

2. The term “Confidential Information” shall mean and include information contained or disclosed in any Materials, including documents, portions of documents, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived therefrom that is deemed to be proprietary or confidential by any party to which it belongs.

3. The term “Counsel” shall mean in-house or outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed in the law firms that represent any party in this action.

GENERAL RULES

4. Each party to this litigation that produces or discloses any Materials, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, or information that the producing party believes should be subject to this Protective

1 Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL –
2 FOR COUNSEL ONLY.”

3 a. Any party may designate information as “CONFIDENTIAL” only if,
4 in the good faith belief of such party and its counsel, the unrestricted disclosure of
5 such information could be potentially prejudicial to the business or operations of
6 such party.

7 b. Any party may designate information as “CONFIDENTIAL – FOR
8 COUNSEL ONLY” only if, in the good faith belief of such party and its counsel,
9 the information is among that considered to be most sensitive by the party,
10 including but not limited to trade secret or other confidential research,
11 development, financial or other commercial information.

12 5. In the event the producing party elects to produce materials for
13 inspection, no marking need be made by the producing party in advance of the
14 initial inspection. For purposes of the initial inspection, all materials produced
15 shall be considered as “CONFIDENTIAL – FOR COUNSEL ONLY,” and shall be
16 treated as such pursuant to the terms of this Order. Thereafter, upon selection of
17 specified materials for copying by the inspecting party, the producing party shall,
18 within a reasonable time prior to producing those materials to the inspecting party,
19 mark the copies of those materials that contain Confidential Information with the
20 appropriate confidentiality marking.

21 6. Whenever a deposition taken on behalf of any party involves a
22 disclosure of Confidential Information of any party:

23 a. Said deposition or portions thereof shall be designated as
24 containing Confidential Information subject to the provisions of this Order; such
25 designation shall be made on the record whenever possible, but a party may
26 designate portions of depositions as containing Confidential Information after
27 transcription of the proceedings; a party shall have until fifteen (15) days after
28 receipt of the deposition transcript to inform the other party or parties to the action

1 of the portions of the transcript designated “CONFIDENTIAL” or
2 “CONFIDENTIAL – FOR COUNSEL ONLY”;

3 b. the disclosing party shall have the right to exclude from
4 attendance at said deposition, during such time as the Confidential Information is
5 to be disclosed, any person other than the deponent, counsel (including their staff
6 and associates), the court reporter, and the person(s) agreed upon pursuant to
7 paragraph 8 below; and

8 c. the originals of said deposition transcripts and all copies thereof
9 shall bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR
10 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately
11 presented to a court for filing shall not be filed unless it can be accomplished under
12 seal, identified as being subject to this Order, and protected from being opened
13 except by order of this Court.

14 7. All Confidential Information designated as “CONFIDENTIAL” or
15 “CONFIDENTIAL – FOR COUNSEL ONLY” shall not be disclosed by the
16 receiving party to anyone other than persons designated herein and shall be
17 handled in the manner set forth below and, in any event, shall not be used for any
18 purpose other than in connection with this litigation, unless and until such
19 designation is removed either by agreement of the parties, or by order of the Court.

20 8. Information designated “CONFIDENTIAL – FOR COUNSEL
21 ONLY” shall be viewed only by Counsel (as defined in paragraph 3) of the
22 receiving party, and by independent experts under the conditions set forth in this
23 paragraph. The right of any independent expert to receive any Confidential
24 Information shall be subject to the advance approval of such expert by the
25 producing party or by permission of the Court. The party seeking approval of an
26 independent expert shall provide the producing party with the name and curriculum
27 vitae of the proposed independent expert, and an executed copy of the form
28 attached hereto as Exhibit A, in advance of providing any Confidential Information

1 of the producing party to the expert. Any objection by the producing party to an
 2 independent expert receiving Confidential Information must be made in writing
 3 within fourteen (14) days following receipt of the identification of the proposed
 4 expert. Confidential Information may be disclosed to an independent expert if the
 5 fourteen (14) day period has passed and no objection has been made. The approval
 6 of independent experts shall not be unreasonably withheld.

7 9. Information designated "CONFIDENTIAL" shall be viewed only by
 8 Counsel (as defined in paragraph 3) of the receiving party, by independent experts
 9 (pursuant to the terms of paragraph 8), and by the additional individuals listed
 10 below, provided each such individual has read this Order in advance of disclosure
 11 and has agreed in writing to be bound by its terms:

- 12 (a) Executives who are required to participate in policy decisions
 13 with reference to this action;
- 14 (b) technical personnel of the parties with whom Counsel for the
 15 parties find it necessary to consult, in the discretion of such
 16 counsel, in preparation for trial of this action; and
- 17 (c) stenographic and clerical employees associated with the
 18 individuals identified above.

19 10. With respect to material designated "CONFIDENTIAL" or
 20 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face
 21 of the document to be its originator, author or a recipient of a copy thereof, may be
 22 shown the same.

23 11. All information which has been designated as "CONFIDENTIAL" or
 24 "CONFIDENTIAL – FOR COUNSEL ONLY" by the producing or disclosing
 25 party, and any and all reproductions thereof, shall be retained in the custody of the
 26 Counsel for the receiving party identified in paragraph 3, except that independent
 27 experts authorized to view such information under the terms of this Order may
 28

1 retain custody of copies such as are necessary for their participation in this
2 litigation.

3 12. Before any materials produced in discovery, answers to
4 interrogatories, responses to requests for admission, deposition transcripts, or other
5 documents which are designated as Confidential Information are filed with the
6 Court for any purpose, the party seeking to file such material shall seek permission
7 of the Court to file said material under seal. The parties will follow and abide by
8 applicable law with respect to filing documents under seal in this Court.

9 13. The trial transcript(s) shall also be considered CONFIDENTIAL and
10 shall be used solely in this action.

11 14. At any stage of these proceedings, any party may object to a
12 designation of the materials as Confidential Information. The party objecting to
13 confidentiality shall notify, in writing, counsel for the designating party of the
14 objected-to materials and the grounds for the objection. If the dispute is not
15 resolved consensually between the parties within seven (7) business days of receipt
16 of such a notice of objections, the objecting party may move the Court for a ruling
17 on the objection. The materials at issue shall be treated as Confidential
18 Information, as designated by the designating party, until the Court has ruled on
19 the objection or the matter has been otherwise resolved.

20 15. All Confidential Information shall be held in confidence by those
21 inspecting or receiving it, and shall be used only for purposes of this action.
22 Counsel for each party, and each person receiving Confidential Information shall
23 take reasonable precautions to prevent the unauthorized or inadvertent disclosure
24 of such information. If Confidential Information is disclosed to any person other
25 than a person authorized by this Order, the party responsible for the unauthorized
26 disclosure must immediately bring all pertinent facts relating to the unauthorized
27 disclosure to the attention of the other parties and, without prejudice to any rights
28

1 and remedies of the other parties, make every effort to prevent further disclosure
2 by the party and by the person(s) receiving the unauthorized disclosure.

3 16. No party shall be responsible to another party for disclosure of
4 Confidential Information under this Order if the information in question is not
5 labeled or otherwise identified as such in accordance with this Order.

6 17. If a party, through inadvertence, produces any Confidential
7 Information without labeling or marking or otherwise designating it as such in
8 accordance with this Order, the designating party may give written notice to the
9 receiving party that the document or thing produced is deemed Confidential
10 Information, and that the document or thing produced should be treated as such in
11 accordance with that designation under this Order. The receiving party must treat
12 the materials as confidential, once the designating party so notifies the receiving
13 party. Counsel for the parties shall agree on a mutually acceptable manner of
14 labeling or marking the inadvertently produced materials "CONFIDENTIAL" or
15 "CONFIDENTIAL – FOR COUNSEL ONLY."

16 18. Nothing herein shall prejudice the right of any party to object to the
17 production of any discovery material on the grounds that the material is protected
18 as privileged or as attorney work product.

19 19. Nothing in this Order shall bar counsel from rendering advice to their
20 clients with respect to this litigation and, in the course thereof, relying upon any
21 information designated as Confidential Information, provided that the contents of
22 the information shall not be disclosed.

23 20. This Order shall be without prejudice to the right of any party to
24 oppose production of any information for lack of relevance or any other ground
25 other than the mere presence of Confidential Information. The existence of this
26 Order shall not be used by either party as a basis for discovery that is otherwise
27 improper under the Federal Rules of Civil Procedure.

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1 21. Nothing herein shall be construed to prevent disclosure of
2 Confidential Information if such disclosure is required by law or by order of the
3 Court.

4 22. The provisions of this Order shall not terminate at the conclusion of
5 this action. Within ninety (90) days after final termination of this action, including
6 any and all appeals, counsel for each party shall, upon request of the producing
7 party, return all Confidential Information to the party that produced the
8 information, including any copies, excerpts, and summaries thereof, or shall
9 destroy same at the option of the receiving party, and shall purge all such
10 information from all machine-readable media on which it resides. Notwithstanding
11 the foregoing, counsel for each party may retain all pleadings, briefs, memoranda,
12 motions, and other documents filed with the Court that refer to or incorporate
13 Confidential Information, and will continue to be bound by this Order with respect
14 to all such retained information. Further, attorney work product materials that
15 contain Confidential Information need not be destroyed, but, if they are not
16 destroyed, the person in possession of the attorney work product will continue to
17 be bound by this Order with respect to all such retained information. Counsel for
18 the parties shall make certification of compliance with the provisions of this
19 paragraph and shall deliver that certification to all parties to this action not more
20 than one-hundred twenty (120) days after the final termination of this action.

21 23. The restrictions and obligations set forth herein shall not apply to any
22 information that: (a) The parties agree should not be designated confidential; (b)
23 the parties agree, or the Court rules, is already public knowledge; (c) the parties
24 agree, or the Court rules, has become public knowledge other than as a result of
25 disclosure by the receiving party, its employees, or its agents in violation of this
26 Order; or (d) has come or shall come into the receiving party's legitimate
27 knowledge independently of the production by the designating party. Prior
28 knowledge must be established by pre-production documentation.

1 24. The restrictions and obligations herein shall not be deemed to prohibit
2 discussions of any Confidential Information with anyone if that person already has
3 or obtains legitimate possession thereof.

4 25. Transmission by facsimile is acceptable for all notification purposes
5 herein.

6 26. This Order may be modified by agreement of the parties, subject to
7 approval by the Court.

8 27. The Court may modify the terms and conditions of this Order for good
9 cause, or in the interest of justice, or on its own order at any time in these
10 proceedings. The parties prefer that the Court provide them with notice of the
11 Court's intent to modify the Order and the content of those modifications, prior to
12 entry of such an order.


13 **28. No items will be filed under seal without a prior application to,**
14 **and order from, the judge presiding over the hearing or trial. Only when the**
15 **judge presiding over the hearing or trial permits filing an item or items under**
16 **seal may confidential material filed with the Court be filed in a sealed**
17 **envelope or other container marked on the outside with the caption of this**
18 **action and the following statement:**

19 **"CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER."**
20 **If any person fails to file protected documents or information under seal, any**
21 **party to this lawsuit may request that the Court place the filing under seal.**

22 **Whenever the Court grants a party permission to file an item under**
23 **seal, a duplicate disclosing all nonconfidential information shall be filed and**
24 **made part of the public record. The item may be redacted to eliminate**
25 **confidential material from the public document. The public document shall**
26 **be titled to show that it corresponds to an item filed under seal, e.g.,**
27 **"Redacted Copy of Sealed Declaration of John Smith in Support of Motion**
28

1 **for Summary Judgment.” The sealed and redacted documents shall be filed**
2 **simultaneously.**

3
4 IT IS SO ORDERED this 7th day of September, 2007.

5
6 
7 _____
Judge Ruben B. Brooks

8 IT IS SO STIPULATED.

9
10 Dated: August 20, 2007

DEL MAR LAW GROUP

11
12
13 _____
14 /s/ John H. Donboli
By: John H. Donboli
Attorneys for Plaintiff

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16
17 Dated: August 20, 2007

GORDON & REES LLP

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19
20 _____
21 /s/ Craig J. Mariam
By: Craig J. Mariam
Attorneys for Defendant BIC USA, INC.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Kevin T. Levine, an individual and on
behalf of the general public,

Plaintiff,

vs.

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and DOES 1 through 100, inclusive

Defendant.

**CASE NO.: 3:07-CV-01096-LAB-
RBD**

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, declare and say that:

1. I am employed as _____
by _____.

2. I have read the Protective Order entered in Levine v. BIC USA, Inc, et al., Case No. 3:07-CV-01096-LAB-RBB, and have received a copy of the Protective Order. The terms of the Protective Order have been explained to me, that I understand the Protective Order, and that to the extent that any action is required by me by virtue of the Protective Order, I will comply with all provisions of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Confidential – For Counsel Only” information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “Confidential” or “Confidential – For Counsel Only” information with anyone other than the persons described in paragraphs 3, 8, and 9 of the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Southern District of California with respect to enforcement of the Protective Order.

6. I understand that any disclosure of use of “Confidential” or “Confidential – For Counsel Only” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

7. If I receive notice that a party in any such action or proceeding is seeking a court order to compel me to testify in such action or proceeding concerning documents or information provided by a party in this proceeding, I shall immediately notify counsel for each party.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this day of 2007, at

_____;

signed _____

printed